88-1604

Supreme Court, U.S.
FILED
APR 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JUDITH DIANE DUFF LEACH, et al., *Petitioners,*

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, et al., *Respondents.*

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit of Respondents, B. C. Clark, Walker Dearing, Jr., D. G. Hoffman, C. D. Wickson, Jr., Carroll Haralson, Alton Freeman, Reeves Cothes, and Dr. Joe Cauley

THOMAS S. MILAM
CECIL KUHNE
CRENSHAW, DUPREE & MILAM
Post Office Box 1499
Lubbock, TX 79408-1499
(806) 762-5281

Counsel for Above-Named Respondents

Fort Worth Brief Printing Co., 610 South Jennings Avenue, Fort Worth, Texas 76104 Phone 817-332-4070

QUESTIONS PRESENTED

1. Whether this Court should consider Petitioners' Question 1 inquiring, in essence, whether rights of shareholders of a national bank to assert a cause of action for breach of fiduciary duty, misrepresentation and fraud under RICO are determined by state law since this issue was not raised by Petitioners in the District Court or in the Court of Appeals and was raised for the first time in Appellants' Petition for Rehearing in the Court of Appeals.

2. Whether there is any conflict (or even any inconsistency) between the decision of the Court of Appeals in the instant case and the decisions which Petitioners contend are in conflict (such as *Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1983), *cert. denied* 464 U.S. 1002 (1983).

3. Whether the Court of Appeals correctly held that the national banking corporation itself and not the individual stockholder is the person "injured in his business or property" under 18 U.S.C. § 1964 where the only alleged injury to stockholder is the decrease in the value of his stock.

4. Whether the Court of Appeals correctly held that the national banking corporation itself and not the individual stockholder is the person injured and having a cause of action against a director for violation of the National Bank Act under 12 U.S.C. § 93(a) where the only alleged injury to the stockholder is the decrease in the value of his stock.

LIST OF PARTIES

The parties to the proceedings below were the Petitioners, Judith Diane Duff Leach, individually and as next friend of her minor child, Jeremiah Christopher Duff Leach, and as the personal representative of the estate of Arthur James Duff, and Ted E. Duff and the Respondents, Federal Deposit Insurance Corporation, Receiver of Seminole State National Bank, Seminole, Texas; B. C. Clark, Paul Condit, Walker Dearing, Jr., Dwayne Herman, D. G. Hoffman, C. D. Wickson, Jr., Carroll Haralson, Alton Freeman, Reeves Cothes, Sam Spikes, George Shivers, Dr. Joe Cauley, MBank Dallas, Richard Watts, S. H. Hart, Sr., Kenneth Newcomb, R. D. Skelton, Sr., and First West Financial Ventures.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CAPTION 1

OPINIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2, 3

1. RICO Statute 2

2. National Bank Act 3

STATEMENT OF THE CASE 3

ARGUMENT 6

1. Petitioners' contention concerning alleged holding of Court of Appeals as to governing effect of state law is not before this Court for review 6

2. The decision of the Court of Appeals is correct 8

3. The decision of the Court of Appeals is not in conflict with other decisions 10

CONCLUSION 14

SIGNATURE OF COUNSEL 14

CERTIFICATE OF SERVICE 15

TABLE OF CONTENTS (Continued)

Page

APPENDIX

Opinion of Fifth Circuit Court of Appeals A-1

Memorandum and Order A-23

Order A-29

Judgment of Dismissal A-30

Judgment A-31

TABLE OF AUTHORITIES

Cases Page

Adams-Lundy v. Ass'n of Professional Flight Attendants, 844 F.2d 245, 250 (5th Cir. 1988) 6

Chesbrough v. Woodworth, 244 U.S. 72, 37 S.Ct. 579, 61 L.Ed. 1000 (1917) 5, 12

Crocker v. Federal Deposit Insurance Corp., 826 F.2d 347, 349 (5th Cir. 1987) 6, 10

Delta Air Lines, Inc. v. August, 450 U.S. 356, 67 L.Ed.2d 287 (1981) 7

EEOC v. FLRA, 476 U.S. __ , 90 L.Ed.2d 19 (1986) 8

Ehlers v. City of Decatur, 614 F.2d 54 (1) (5th Cir. 1980) 10

Gaff v. Federal Deposit Ins. Corp., 814 F.2d 311 (6th Cir. 1987), *reh'g on other grounds* 828 F.2d 1145 (1987) 6, 10

Harmsen v. Smith, 542 F.2d 496 (9th Cir. 1976) 6, 12, 13

Hoover v. Ronwin, 466 U.S. 558, 80 L.Ed.2d 590 (1984) 8

Miree v. DeKalb County, 433 U.S. 25, 53 L.Ed.2d 557 (7) (1977) 8

O'Donnell v. Kusper, 602 F.Supp. 619 (N.D. Ill. 1985) 10, 11

Pegues v. Morehouse Parish School Board, 632 F.2d 1279 (1) (5th Cir. 1980) 10

Schacht v. Brown, 711 F.2d 1343, 1347 (7th Cir. 1983), *cert. denied* 464 U.S. 1002 (1983) ..... i, 10, 11

Sedima, S. P. R. L. v. Imrex Co., 473 U.S. 479, 496, 87 L.Ed.2d 346 (1985) 6

Thomas v. Howard, 455 F.2d 228 (2) (3d Cir. 1972) 10

Warren v. Manufacturers Nat. Bank of Detroit, 759 F.2d 542 (6th Cir. 1985) 10

TABLE OF AUTHORITIES (Continued)

Miscellaneous Page

12 U.S.C. § 21 6

12 U.S.C. § 93 ..... i, 3, 4, 5, 8

18 U.S.C. § 1961 3

18 U.S.C. § 1964 ..... i, 2, 5, 7

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1331 ..... 2, 3

28 U.S.C. § 1921 2

42 U.S.C. § 1983 10

Rule 12(b)(6), Fed. R. Civ. P. 4

Rule 17.1(a), United States Supreme Court Rules 13

19 Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* § 4515 (1982) 9

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JUDITH DIANE DUFF LEACH, et al., *Petitioners,*

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, et al., *Respondents.*

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit of Respondents, B. C. Clark, Walker Dearing, Jr., D. G. Hoffman, C. D. Wickson, Jr., Carroll Haralson, Alton Freeman, Reeves Cothes, and Dr. Joe Cauley

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 860 F.2d 1266, and is reproduced in the appendix (A-1-22).

The decision of the United States District Court for the Northern District of Texas has not been reported.

The District Court's Memorandum and Order, Order, Judgment of Dismissal, and Judgment are reproduced in the appendix (A-23-31).

JURISDICTION

The judgment of the Court of Appeals was entered on December 2, 1988. Petitioners' (Appellants in the Court of Appeals) Motion for Rehearing was filed on or about December 15, 1988, and the Order Denying Petition for Rehearing was entered on January 3, 1989.

Plaintiffs have alleged claims under RICO and under the National Bank Act and asserted jurisdiction in the District Court under 18 U.S.C. § 1964 and 28 U.S.C. § 1331.

The United States Court of Appeals for the Fifth Circuit had jurisdiction of the appeal under 28 U.S.C. § 1921 granting to the courts of appeal jurisdiction of appeals from all final decisions of the district courts of the United States.

This Court has potential and discretionary jurisdiction of Petitioners' appeal under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

1. *RICO Statute.* 18 U.S.C. § 1964(c) provides:

> "(c) Any person *injured in his business or property* by reason of violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold *the damages he sustains* and the cost of the suit, including a reasonable attorney's fee." (Emphasis added.)

2. *National Bank Act.* 12 U.S.C. § 93(a) (last sentence) provides:

"(a)* * *. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

STATEMENT OF THE CASE

The Petitioners, Judith Diane Duff Leach, individually and as next friend of her minor child, Jeremiah Christopher Duff Leach, and as the personal representative of the estate of Arthur James Duff, and Ted E. Duff, ("Leach") are minority shareholders in the Seminole State National Bank. Leach initiated an action against the Seminole State National Bank ("Bank"), the former officers and directors of the Bank, and MBank Dallas, Texas in the United States District Court for the Northern District of Texas, Lubbock Division. Federal jurisdiction was predicated on alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*, and federal question jurisdiction, 28 U.S.C. § 1331, based upon allegations of violations of The National Bank Act, 12 U.S.C. § 93, *et seq.*

The Federal Deposit Insurance Corporation ("FDIC") was appointed receiver for the Bank and replaced the Bank in the suit as a party defendant.

The only damage alleged by Plaintiffs and the only damage ever claimed by Plaintiffs is that alleged in Paragraph 33 of Plaintiffs' First Amended Original Complaint

wherein Plaintiffs allege that the value of the shares of stock owned by Plaintiffs in the Bank have become totally worthless and Plaintiffs have suffered actual damage in the approximate amount of $180,000.00.

Each of the Defendants filed a Motion to Dismiss under Rule 12(b)(6), Fed. R. Civ. P., on the ground that Plaintiffs lacked standing because they had asserted no non-derivative claims belonging to Plaintiffs as minor shareholders in their individual capacity. The only claims asserted by Plaintiffs (diminished value of the stock) is a derivative claim belonging to the corporation which the FDIC, as receiver of the corporation, had the sole right to pursue.

In this connection, it is undisputed that the FDIC has in fact filed a suit against the officers and directors of the Bank asserting such claims.

The District Court sustained Defendants' Motion to Dismiss stating in its Memorandum and Order that diminution in value of the stock of a corporation is insufficient indirect harm to give the shareholder standing to sue in his own right and that a shareholder must allege some injury other than decline in the value of his stock in order to state a direct injury distinct from that suffered by the corporation which would permit the shareholder to maintain an individual cause of action.

The Fifth Circuit Court of Appeals affirmed the District Court's Judgment of Dismissal.

The Court of Appeals first held that Plaintiffs' complaint stated no injury personal to Plaintiffs under the National Bank Act, 12 U.S.C. § 93(a).

The Court of Appeals stated, *inter alia:*

> "Thus, we conclude that Congress intended the statute, 12 U.S.C. § 93(a), to differentiate between persons who have suffered injury which the law treats as 'corporate' injury and persons who have suffered injury which the law treats as 'personal' to the person."

The Court concluded that the persons sustaining injury as referred to in 12 U.S.C. § 93(a) referred to individuals sustaining personal injury as a result of violation of the National Bank Act by a director such as was involved in *Chesbrough v. Woodworth*, 244 U.S. 72, 37 S.Ct. 579, 61 L.Ed. 1000 (1917), where the plaintiff purchased stock in a corporation in reliance on false information furnished by the defendant director and therefore was personally and individually injured by virtue of the director's conduct.

The claim in *Chesbrough* was clearly an individual claim for individual injury and was not a derivative claim. However, the claim asserted in the case at bar is by stockholders for a decrease in the value of their stock and it is well settled that an injury which damages the corporation and indirectly damages the stockholders through loss of value of their stock is a cause of action belonging to the corporation and not a nonderivative claim belonging to the stockholders.

The Court of Appeals followed essentially the same reasoning in rejecting Plaintiffs' claim that Plaintiffs had sustained an individual nonderivative injury to support standing under 18 U.S.C. § 1964(c) (RICO).

As noted above, § 1964(c) provides for suit by:

"Any person injured in his business or property * * *"

The Court held that the statute clearly requires that the plaintiff have sustained an injury and in the case at bar where the only injury sustained by Plaintiffs is an indirect injury resulting from diminution of the value of the stock, the injury is one sustained by the corporation itself for which the corporation and not the individual stockholders have a cause of action, citing *Sedima, S. P. R. L. v. Imrex Co.*, 473 U.S. 479, 496, 87 L.Ed.2d 346 (1985).

The court also noted that its decision was supported by the previous Fifth Circuit decisions of *Crocker v. Federal Deposit Insurance Corp.*, 826 F.2d 347, 349 (5th Cir. 1987), and *Adams-Lundy v. Ass'n of Professional Flight Attendants*, 844 F.2d 245, 250 (5th Cir. 1988), as well as the decision of the Sixth Circuit in *Gaff v. Federal Deposit Insurance Corp.*, 814 F.2d 311 (6th Cir. 1987), *reh'g on other grounds* 828 F.2d 1145 (1987); and *Harmsen v. Smith*, 542 F.2d 496 (9th Cir. 1976).

ARGUMENT

1. Petitioners' contention concerning alleged holding of Court of Appeals as to governing effect of state law is not before this Court for review.

The Petition for Writ of Certiorari lists two questions presented. The first is "Whether the rights of shareholders in a banking association created solely by federal authority under the National Bank Act, 12 U.S.C. § 21, *et seq.*, to assert causes of action for breach of fiduciary

duty, misrepresentation and fraud under RICO, 18 U.S.C. § 1964(c), *et seq.*, are determined by state law."

Further in this regard, on page three of the Petition, Petitioners state:

> "The controlling question here is should the law of particular state govern the rights of shareholders in an association created solely by federal authority, under the National Bank Act, 12 U.S.C. § 21 *et seq.*, p. Ap.-50, *infra*?"

As discussed further below, the alleged question and issue are too broadly stated and are inaccurately stated because the Court of Appeals did not hold that state law governs the rights of shareholders in a national bank under RICO.

It should also be noted at the outset that this so-called question or issue is not even before this Court for review because it was raised for the first time by Petitioners in their Petition for Rehearing in the Court of Appeals.

It is a fundamental general principle that this Court will not consider issues not presented to the Court of Appeals.

In *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 67 L.Ed.2d 287 (1981), this Court said:

> "Although defendant's petition for certiorari presented the question of the District Judge's abuse of discretion in denying defendants costs under Rule 54(d), that question was not raised in the Court of Appeals and is not properly before us. We therefore affirm the judgment of the Court of Appeals." 67 L.Ed.2d at p. 298.

In *Hoover v. Ronwin*, 466 U.S. 558, 80 L.Ed.2d 590 (1984), the Court said:

> "We also do not address Ronwin's contention that the Arizona method of limiting bar admissions violates the Fifth and Fourteenth Amendments. As Ronwin concedes, he made this argument for the first time in his response to petitioners' motion for rehearing in the Court of Appeals. His failure to raise this issue in a timely manner precludes our consideration." 80 L.Ed.2d at p. 603, fn. 7b.

See also *EEOC v. FLRA*, 476 U.S. ___ , 90 L.Ed.2d 19 (1986); *Miree v. DeKalb County*, 433 U.S. 25, 53 L.Ed.2d 557 (7) (1977).

Thus, this Court should not consider Petitioners' contention that the Court of Appeals held that the rights of shareholders in a national banking corporation to assert an action under RICO are determined by state law.

2. The decision of the Court of Appeals is correct.

As noted above, the Court of Appeals did not in fact hold that the rights of shareholders in a national bank to assert causes of action under RICO are governed by state law.

In the Court's determination that Plaintiffs' complaint stated no claim or cause of action under the National Bank Act, the Fifth Circuit did not even make any reference to state law (other than noting that post-*Erie v. Tompkins* law was in conformity with general common law when Congress enacted § 93(a) in 1864).

In its holding that the complaint stated no cause of action under RICO, the Court referred to state law only

in connection with its determination that the corporation itself was the party injured rather than the individual stockholder.

There is certainly nothing unique or unusual in applying state law to various issues which may arise under federal statutes.

This principle is well summarized in 19 Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* § 4515 (1982), in part, as follows (p. 275-276):

> "It frequently is said that the doctrine of Erie Railroad Company v. Tompkins applies only in diversity of citizenship cases; this simply is wrong. The Erie case and the Supreme Court decisions following it apply in federal question cases as well.
>
> * * *
>
> "The impact of this passage is that Erie reflects the principle that federal courts should apply state law to legal issues, unless there is some federal interest sufficient to justify the application of independent federal standards. This is in keeping with the policy expressed in the Rules of Decision Act that absent federal requirements the 'laws of the several states * * * shall be regarded as rules of decision in civil actions * * *' in the federal courts. Of course, when there is a valid and pertinent federal rule of law that applies to a situation, then the Supremacy Clause requires that it be applied, notwithstanding a state rule to the contrary. Consequently the task under Erie is not to make a choice between federal and state law, but rather to make a decision whether there is a valid federal rule that applies to the matter in dispute."

Numerous examples could be given.

One of the most prominent pertains to the application of the statute of limitations of a particular state with respect to suits brought under federal statutes where the particular federal statute does not contain a specific limitation provision.

For example, there are numerous cases under the Federal Civil Rights Act, 42 U.S.C. § 1983, holding that the most closely analogous state statute of limitations will be applied since the civil rights statute itself contains no limitation provision. E.g., *Pegues v. Morehouse Parish School Board*, 632 F.2d 1279 (1) (5th Cir. 1980); *Thomas v. Howard*, 455 F.2d 228 (2) (3d Cir. 1972); *Ehlers v. City of Decatur*, 614 F.2d 54 (1) (5th Cir. 1980).

Respondents submit that the decision of the Court of Appeals in the case at bar is clearly correct.

3. The decision of the Court of Appeals is not in conflict with other decisions.

Petitioners argue that the decision of the Fifth Circuit in the case at bar and other decisions such as *Crocker v. FDIC*, 826 F.2d 347 (5th Cir. 1987) (RICO); *Gaff v. FDIC*, 814 F.2d 311 (6th Cir. 1987) (National Bank Act); and *Warren v. Manufacturers Nat'l Bank of Detroit*, 759 F.2d 542 (6th Cir. 1985) (RICO), holding in essence that a decrease in the value of the stock is not a nonderivative individual injury to the shareholder but constitutes an injury to the corporation, are in conflict with the decision of the Seventh Circuit in *Schacht v. Brown*, 711 F.2d 1343, 1347 (7th Cir. 1983), *cert. denied* 464 U.S. 1002 (1983), and also with *O'Donnell v. Kusper*, 602 F.Supp. 619 (N.D. Ill. 1985).

No conflict exists between the decision of the Fifth Circuit in the case at bar and the Seventh Circuit case of *Schacht v. Brown*, 711 F.2d 1343, or *O'Donnell v. Kusper*, 602 F.Supp. 619.

First of all, neither of these cases involved the question of whether the corporation, as distinguished from the individual shareholder, sustained an injury when the sole damage was depreciation in the value of the shareholder's stock.

In *Schacht*, the court held that the state director of insurance, as statutory liquidator of the insurer, had standing to maintain a civil action under RICO against officers and directors of the parent corporation who allegedly fraudulently continued the insurer in business past its point of insolvency. In the case at bar, the Court held that the FDIC, as receiver for the Bank, was the proper party to maintain a civil action under RICO and the National Bank Act for any damage done to the corporation by the officers and directors in violation of federal statutes. Thus, the holding of the court in *Schacht* involving a somewhat analogous question is in complete accord with the decision of the Court of Appeals in the case at bar.

The *O'Donnell* case involved the question of the standing of a taxpayer to sue the county clerk under RICO for alleged violation of the Competitive Bidding statutes. The Court there held that the Illinois Supreme Court has recognized the rights of the state attorney on behalf of his county to bring an action for diversion of public money in violation of the state statute against the members of his county board of commissioners, his county

treasurer, and county clerk, and "thus, the County official responsible for maintaining a RICO action in the present case is the State's attorney." 602 F.Supp. at p. 624.

Thus, not only are the cases cited by Petitioners not in conflict with the decision of the Fifth Circuit in the case at bar, but the rationale of such cases is directly in line with and completely consistent with the decision of the Fifth Circuit in the case at bar.

Petitioners also contend that the decision of the Fifth Circuit in the case at bar is in conflict with the decision of this Court in *Chesbrough v. Woodworth*, 244 U.S. 72, 37 S.Ct. 579, 61 L.Ed. 1000 (1917), and the decision of the Ninth Circuit in *Harmsen v. Smith*, 542 F.2d 496 (9th Cir. 1976).

As discussed extensively by the Court of Appeals in its decision in this case, the decision of this Court in *Chesbrough* and the decision of the Ninth Circuit in *Harmsen* are in no way inconsistent with the decision of the Fifth Circuit in the case at bar and, in fact, such decisions support the decision of the Court of Appeals in the case *sub judice*.

Chesbrough did not involve alleged damage to a shareholder because of diminution in the value of the shareholder's stock but was a case where plaintiff (who was not a shareholder) purchased stock in reliance upon the reports of financial condition of the bank promulgated by defendants, which clearly asserted an injury to an individual as distinguished from a derivative injury to the corporation.

Likewise, *Harmsen* recognized the distinction between a *Chesbrough* type claim involving direct injury to an individual as distinguished from a derivative claim involving only a corporate injury.

In summary, the cases cited by Petitioners as being conflicting decisions are in fact totally consistent with and support the decision of the Fifth Circuit in the case at bar and there is no conflict which would give rise to the exercise of this Court's discretionary jurisdiction as asserted by Petitioners under Rule 17.1(a) of the United States Supreme Court Rules.

CONCLUSION

The decision of the Fifth Circuit in the case at bar is clearly correct for the reasons stated therein and in previous decisions of the Fifth Circuit and other circuits and there is no conflict between the decision of the Fifth Circuit in this case and any prior decision of this Court or the courts of another circuit.

Wherefore, Respondents, B. C. CLARK, WALKER DEARING, JR., D. G. HOFFMAN, C. D. WICKSON, JR., CARROLL HARALSON, ALTON FREEMAN, REEVES COTHES, and DR. JOE CAULEY, pray that Petitioners' Petition for Writ of Certiorari be denied.

Respectfully submitted,

CRENSHAW, DUPREE
& MILAM
Post Office Box 1499
Lubbock, TX 79408-1499
(806) 762-5281

By:
THOMAS S. MILAM
Texas Bar No. 14035000

By:
CECIL KUHNE
Texas Bar No. 11760000

Counsel for Above-Named Respondents

CERTIFICATE OF SERVICE

This is to certify that we have mailed three copies of the above Brief in Opposition to Petition for Certiorari by first class mail, postage prepaid, on this the ____ day of _____, 1989, to each of the following:

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk
600 Camp Street
New Orleans, Louisiana 70130

HONORABLE HALBERT O.
WOODWARD, JUDGE
UNITED STATES DISTRICT COURT
Northern District of Texas
1205 Texas Avenue, Room C-221
Lubbock, Texas 79401

FRANKLIN H. McCALLUM
HINKLE, COX, EATON, COFFIELD
& HENSLEY
Post Office Box 3580
Midland, Texas 79702
Attorney for Plaintiffs

JEFF JOYCE
WINSTEAD, McGUIRE, SECHREST
& MINICK
2300 Momentum Place
1717 Main Street
Dallas, Texas 75201
Attorneys for Federal Deposit Insurance Corporation as Receiver for MBank Dallas N.A.

MICHELLE BORZILLO
Regional Bankruptcy Attorney
Federal Deposit Insurance Corporation
1910 Pacific Avenue, Suite 1200
Dallas, Texas 75201

RHONDA G. FELLERS
Post Office Box 16817
Lubbock, Texas 79490
Attorney for George Shivers and Paul Condit

PETE BAKER
GLANDON, ERWIN, SCARBOROUGH, BAKER, CHOATE & ARNOT
Post Office Box 3659
Abilene, Texas 79604
Attorney for Richard Watts, S. H. Hart and Kenneth Newcomb

T. RAY GUY
JOHN C. EICHMAN
JENKENS & GILCHREST
3200 Allied Bank Tower
1445 Ross Avenue
Dallas, Texas 75202-2711
Attorneys for FDIC, Receiver of Seminole State National Bank

JOHN C. SIMS
SIMS, KIDD, HUBBERT & WILSON
Post Office Box 10236
Lubbock, Texas 79408
Attorney for Dwayne Herman

TOM M. RICHARDS
CASMIR, WILLINGHAM & KRAGE
1300 Bryan Tower
Dallas, Texas 75201
Attorney for R. D. Skelton

SOLICITOR GENERAL
Department of Justice
Washington, D.C. 20530

SAM SPIKES
Federal Prison Camp
1900 Simler Avenue
Big Spring, Texas 79720

CRENSHAW, DUPREE
& MILAM

By:
CECIL KUHNE

Attorneys for Respondents,
B. C. CLARK, WALKER
DEARING, JR., D. G.
HOFFMAN, C. D.
WICKSON, JR., CARROLL
HARALSON, ALTON
FREEMAN, REEVES
COTHES, and
DR. JOE CAULEY